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MALAYSIAN TRADE UNION CONGRESS & ORS

v.

MENTERI TENAGA, AIR DAN KOMUNIKASI & ORS

B

HIGH COURT MALAYA, KUALA LUMPUR
HADHARIAH SYED ISMAIL JC
[JUDICIAL REVIEW NO: R2-25-09-2007]
28 JUNE 2010
[2010] CLJ (JT2)

C

ADMINISTRATIVE LAW: *Exercise of administrative powers - Judicial review - Decision - Rejection by 1st respondent of applicants' request seeking disclosure of concession agreement and audit report pertaining to increase in water tariff for Selangor - Whether applicants adversely*

D

affected by 1st respondent's decision and had locus standi to bring action - Whether disclosure of both documents detrimental to national security or public interest

PUBLIC AUTHORITIES: *Remedies - Judicial review - Decision -*

E

Rejection by 1st respondent of applicants' request seeking disclosure of concession agreement and audit report pertaining to increase in water tariff for Selangor - Whether applicants adversely affected by 1st respondent's decision and had locus standi to bring action - Whether disclosure of both documents detrimental to national security or public interest

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PUBLIC UTILITIES: *Water - Water tariff - Judicial review - Decision - Rejection by 1st respondent of applicants' request seeking disclosure of concession agreement and audit report pertaining to increase in water tariff for Selangor - Whether applicants adversely affected by 1st respondent's decision and had locus standi to bring action - Whether disclosure of both*

G

documents detrimental to national security or public interest

CONSTITUTIONAL LAW: *Fundamental liberties - Right of access to water - Judicial review - Decision - Rejection by 1st respondent of applicants' request seeking disclosure of concession agreement and audit*

H

report pertaining to increase in water tariff for Selangor - Whether applicants adversely affected by 1st respondent's decision and had locus standi to bring action - Whether disclosure of both documents detrimental to national security or public interest

I

On or about 15 December 2004 the 2nd respondent, 3rd respondent and Syarikat Bekalan Air Selangor Sdn Bhd ('SYABAS') entered into a Concession Agreement ('CA') governing the water tariff for Selangor. Under the CA, SYABAS was entitled to increase the water tariff only if it managed to achieve a 5% reduction in Non-Revenue Water. It was then revealed that an Audit Report ('AR') was produced to Cabinet confirming that SYABAS had achieved the 5% reduction in Non-Revenue Water and was, thus, entitled to increase the water tariff with effect from 1 November 2006. In the meantime, media reports surfaced to the effect that SYABAS would get a 15% increase in the water tariff. The applicants were concerned with the increase in the water tariff and sought to access the abovementioned documents to ascertain whether their right to have access to clean water at a price affordable to the public was protected. The 1st applicant sent a letter dated 7 November 2006 to the 1st respondent seeking disclosure of the CA and AR. The 1st respondent rejected the request, resulting in the present application for judicial review by the applicants. There were essentially two issues to be determined: (i) whether the applicants could be said to be adversely affected by the 1st respondent's decision and, therefore, had the locus standi to bring this action; and (ii) whether disclosure of both documents (CA and AR) were detrimental to national security or public interest.

Held (allowing the application with costs):

(1) The applicants were persons "adversely affected" by the decision of the 1st respondent. Each and every applicant was a paying consumer of water within the area covered by the CA. With SYABAS in monopoly over the distribution of treated water in the concession area, the applicants did not have alternative access to treated water. If the water tariff was increased and they had to pay more money for water, they had no real choice to refuse to pay as there was no alternative supplier of water available. In addition thereto, water, being essential for life, is part of a constitutional right which can be implied under the Federal Constitution. On the facts and circumstances of this case, it was obvious that the applicants had a real and genuine interest in the subject matter. They were adversely affected by the increase in the water tariff and in this regard there was a direct nexus with the 1st respondent's decision. Therefore, the applicants had established that they had the *locus standi* to bring this action. (para 13)

(2) The CA contained no information detrimental to national security or public interest, but its disclosure may lead to public discussion and criticism against the government. Even though the CA was yet to be disclosed, information on Non-Revenue Water and its percentage of reduction, formula for the increase in tariff, period of review and payment of compensation to SYABAS had already been circulated by the media and other parties. In that sense, it could no longer be treated as a confidential document since those were the major issues. In the first place, the CA was not a private agreement. It was executed with public interest in mind. The public relies on the good conscience and governance of the government to protect their interest. Therefore, it was in the public interest for the CA to be disclosed and until such disclosure, it would cause more anxiety to the public who want to know about matters that affect their basic needs. In this era where priority is given to the needs of the rakyat, it was only fair that the CA be made public. The disclosure of the CA would also serve public interest in keeping the public informed of the workings of the government as well as promoting discussion of public affairs. *The Commonwealth of Australia v. John Fairfax & Sons Ltd* (foll). (paras 15, 16 & 17)

(3) Although the AR contained information relevant to the CA, particularly the increase in the water tariff, it did not contain information detrimental to national security or public interest. As with the CA, it could be foreseen that there would be public discussion and criticism against the government. Logically, if the CA was disclosed, the AR also had to be made public since it referred and commented on certain provisions in the CA. Even though the 1st and 3rd respondents argued that the AR was classified as "Rahsia", its classification did not in any way bar this court from looking at the document as a whole to see whether its disclosure would be detrimental to national security or public interest. This must be the only test to be applied by this court. It is nonsensical to say any document put before Cabinet is automatically to be treated as "Rahsia" under s. 2A of the Official Secrets Act 1972 ('OSA'). *Takong Tabari v. Government of Sarawak & Ors* (foll); *Shri Dinesh Trivedi, MP & Ors v. Union of India & Ors* (foll). (para 18)

(4) To sum up, the 1st respondent's refusal to disclose the CA and the AR was made without taking into consideration the legitimate expectation of a member of the public affected in the decision-making process to be treated fairly. The respondents' decision to allow privatization of water services and arbitrary increases to the tariff and at the same time invoke the OSA was disproportionate not only to the OSA's aim but also ran counter to the principles of good governance, accountability, transparency and "the interest of the rakyat should come first". Failure to comply with these principles would inevitably result in this court giving an order compelling the respondents to do so. (para 22)

Case(s) referred to:

Council of Civil Service Unions v. Minister for Civil Service [1984] 1 AC 374 ***(refd)***

Government of Malaysia v. Lim Kit Siang & Another Case [1988] 1 CLJ 219; [1988] 1 CLJ (Rep) 63 SC ***(refd)***

Shri Dinesh Trivedi, MP & Ors v. Union of India & Ors [1997] 4 SCC 306 ***(foll)***

Tan Sri Haji Othman Saat v. Mohamed Ismail [1982] 1 LNS 2 FC ***(refd)***

Takong Tabari v. Government of Sarawak & Ors [1995] 1 CLJ 403 SC ***(foll)***

The Commonwealth of Australia v. John Fairfax & Sons Ltd [1980] 147 CLR 39 ***(foll)***

QSR Brands Bhd v. Suruhanjaya Sekuriti & Anor [2006] 2 CLJ 532 CA ***(refd)***

Legislation referred to:

Federal Constitution, art. 8
Official Secrets Act 1972, s. 2A
Rules of the High Court 1980, O. 53 rr. 2(4), 3

For the applicants - Malik Imtiaz (Ang Hean Leng with him); M/s Thomas Philip
For the 1st & 3rd respondents - En Shamsul SFC
For the 2nd respondent - Zauyah Bee Loth Khan, State Legal Adviser

Reported by Suresh Nathan

A

JUDGMENT

Hadhariah Syed Ismail JC:

Introduction

B **[1]** On or about 15 December 2004 the Government of Malaysia, Government of Selangor and Syarikat Bekalan Air Selangor Sdn Bhd (SYABAS) entered into a Concession Agreement. Prior to the concession agreement, the water tariff for Selangor State was determined by the Government of Selangor. With the execution of C the concession agreement, the water tariff is now governed by the terms of the said agreement. Under the agreement, SYABAS is entitled to increase the water tariff only if they managed to achieve 5% reduction in the Non Revenue Water (NRW). It was revealed that Audit Report was produced to the Cabinet and which report D confirmed SYABAS had achieved the 5% reduction in Non Revenue Water and thus entitled to increase the water tariff with effect 1 November 2006. In the meantime media reports surfaced to the effect that SYABAS will get 15% increase in water tariff. With water being a basic need of every living thing, the applicants here are E concerned with the increase in water tariff and seek to access the documents mentioned above for them to see whether their rights to have access to a clean water at a price affordable by the public are protected or not.

F **Request**

[2] The 1st applicant had sent a letter dated 7 November 2006 to the 1st respondent seeking disclosure of the following documents:

(i) Concession Agreement dated 15 December 2004 between the G 2nd respondent, 3rd respondent and Syarikat Bekalan Air Selangor Sdn Bhd (SYABAS); and

(ii) The Audit Report justifying an increase of 15% in the water tariff.

H **The Impugned Decision**

[3] The request was rejected by the 1st respondent. The decision is contained in its letter of 4 December 2006 which reads:

I

Untuk makluman pihak tuan, Kementerian ini berpendapat bahawa Perjanjian Konsesi di antara Kerajaan Persekutuan, Kerajaan Negeri Selangor dan pihak SYABAS serta Laporan Audit tidak sesuai untuk didedahkan kepada umum memandangkan dokumen berkenaan adalah dokumen berperingkat yang dikategorikan sebagai "SULIT" dan "RAHSIA" Kerajaan.

The Application

[4] The application for judicial review was filed into court on 15 January 2007 and leave was obtained on 14 June 2007. By this application, the applicants seek for the following reliefs:

(i) a declaration that the applicants and/or the general public have a right to have access to the Audit Report and the Concession Agreement;

(ii) alternatively, a declaration that the Audit Report and the Concession Agreement are public documents and not Official Secret Documents;

(iii) an order of *certiorari* to quash the decision of the respondents denying the applicants access to the Audit Report and the Concession Agreement;

(iv) an order of *mandamus* directing the Minister to disclose the contents of the Audit Report and the Concession Agreement to the applicants and/or the general public.

The Grounds Of The Application

[5] In a statement pursuant to O. 53 r. 3 of the High Court Rules 1980, the applicants gave the following reasons to support the reliefs claimed:

(i) That the decision of the Minister denying access to the documents is unreasonable.

(ii) That the Minister had failed to take all relevant considerations.

(iii) That the Minister had considered irrelevant considerations.

(iv) That the Minister had violated art. 8, Federal Constitution which required the Minister to act reasonably in failing to give reasons for his decision.

(v) That the applicants have a legitimate expectation that the Minister would act in a responsible manner as required by the Federal Constitution.

Respondents' Stand

[6] In resisting the application, the respondents alleged:

i. Perjanjian Konsesi tersebut dikategorikan sebagai "SULIT" berasaskan kl. 45 perjanjian itu yang menyatakan perjanjian tersebut hanya boleh didedahkan kepada pihak ketiga dengan persetujuan semua pihak kepada perjanjian.

ii. Pemohon-pemohon tiada hak untuk mendapat akses ke atas perjanjian tersebut kerana pemohon-pemohon tiada priviti kepada perjanjian.

iii. Laporan audit dikategorikan sebagai "RAHSIA" berdasarkan fakta bahawa ia telah dibentangkan dan diputuskan dalam Mesyuarat Jemaah Menteri yang bersidang pada 11 Oktober 2006. Justeru itu, dokumen tersebut merupakan dokumen peringkat "RAHSIA" di bawah s. 2A Akta Rahsia Rasmi 1972.

iv. Pemohon-pemohon juga tidak mempunyai *"locus standi"* untuk mengambil tindakan ini terhadap responden-responden.

The Applicants' Stand

[7] In their affidavit in reply to the respondents' affidavit, the applicants took the stand that:

i. Peruntukan sulit dalam Perjanjian Konsesi tidak mengenepikan atau menghadkan bidangkuasa mahkamah ini dalam apa cara pun. Selanjutnya priviti kontrak bukanlah fakta yang relevan untuk dipertimbangkan.

ii. Tiada bukti Laporan Audit dibentangkan di hadapan Kabinet pada tarikh berkenaan.

iii. Laporan Audit tidak terletak di bawah lingkungan Jadual di bawah Akta Rahsia Rasmi 1972.

iv. Penzahiran awam Laporan Audit dan segala maklumat yang terkandung di dalamnya tidak dapat membahayakan sekuriti Negara. Sebaliknya maklumat itu berhak diakses oleh warganegara kerana ia mempengaruhi kepentingan mereka.

v. Pemohon-pemohon mempunyai *locus standi* atas alasan:

(a) Pemohon-pemohon tinggal dalam kawasan yang dibataskan oleh Perjanjian Konsessi.

(b) Pemohon-pemohon memerlukan dan menggunakan air untuk keperluan asas mereka.

(c) Perjanjian Konsessi meletakkan hak pembekalan air yang dirawat secara eksklusif kepada "SYABAS".

(d) Pemohon-pemohon tidak mempunyai akses kepada air yang dirawat kecuali melalui SYABAS untuk keperluan hidup mereka. SYABAS telah memperolehi monopoli ke atas pembekalan air di dalam kawasan yang dibataskan. Dengan sendirinya, pemohon-pemohon adalah pelanggan yang berbayar bagi SYABAS.

Issues To Be Tried

[8] Essentially there are two issues:

i. Whether the applicants can be said to be adversely affected by the decision of the 1st respondent and therefore have a *locus standi* to bring this action?

ii. Whether disclosure of both the documents are detrimental to the national security or public interest?

Locus Standi

[9] Under O. 53 r. 2(4) of the High Court Rules 1980, the applicants must establish that they have been adversely affected by the decision of the 1st respondent. In *Council of Civil Service Unions v. Minister for Civil Service* [1984] 1 AC 374, the House of Lords held that for a decision to be susceptible to the court's reviewing powers, there must first be a decision by a decision maker or a refusal by him to make a decision, and, that decision must affect the aggrieved party by either altering his rights or obligations or depriving him of the benefits which he has been permitted to enjoy. As to the meaning of the word "aggrieved", I refer to the observation made by Hashim Yeop Sani SCJ in *Government of Malaysia v. Lim Kit Siang & Another Case* [1988] 1 CLJ 219; [1988] 1 CLJ (Rep) 63 at p. 88:

A It can hardly be disputed that there is no single authoritative definition of an aggrieved person but in general it can be said that a person "aggrieved" is not merely one who is dissatisfied with some act or decision but one who has been wrongly deprived of or has been refused something to which he is legally entitled. Any person can come to court for the protection or enforcement of his rights.
B

[10] With regard to the issue of *locus standi*, in the case of *Tan Sri Haji Othman Saat v. Mohamed bin Ismail* [1982] 1 LNS 2, the Supreme Court held:

C The sensible approach in the matter of *locus standi* in injunctions and declarations would be that as a matter of jurisdiction, an assertion of an infringement of a contractual or a proprietory right, the commission of a tort, a statutory right or the breach of a statute which affects the plaintiff's interests substantially or where the plaintiff has some genuine interest in having his legal position
D declared, even though he could get no other relief should suffice.

[11] The issue of locus standi was again discussed in the Court of Appeal case of *QSR Brands Bhd v. Suruhanjaya Sekuriti & Anor* [2006] 2 CLJ 532, wherein Gopal Sri Ram JCA states:

E By contrast, *certiorari* and the other prerogative remedies were classified as public law remedies which permitted a far more liberal threshold *locus standi* test to be met. Hence, Lord Wilberforce said in *Gouriet v. Union of Post Office Workers* [1978] AC 435 that in an applications for prerogative writs in the environment of public law
F enforcement the courts have allowed applicants "liberal access under a generous conception of *locus standi.*"

It is to rid this dichotomous approach which often produced injustice that O. 53 in its present form was introduced. There is a single test of threshold *locus standi* for all the remedies that are
G available under the Order. It is that the applicant should be "adversely affected". The phrase calls for a flexible approach. It is for the applicant to show that he falls within the factual spectrum that is covered by the words "adversely affected".

H At one end of the spectrum are cases where the particular applicant has an obviously sufficient personal interest in the legality of the action impugned.

[12] To show they are aggrieved by the decision of the 1st respondent, the applicants have set out in paras 3 and 4 of the
I statement pursuant to O. 53 their grievance and interest in subject matter. They are:

1. Akses kepada air adalah satu hak asasi. Ini termasuklah akses kepada air minuman yang selamat dan mampu diperolehi. Ia juga bermakna harga air mestilah sepadan dengan harga yang mampu dibayar oleh orang ramai.

2. Kerajaan sebagai fiduciary kepada pemohon-pemohon mempunyai kewajipan secara langsung atau tidak langsung untuk memastikan pemohon-pemohon mempunyai akses kepada air minuman yang selamat. Dalam melaksanakan kewajipan tersebut, kerajaan mesti mengambil langkah-langkah untuk mengawasi pasaran air untuk:

   (a) memastikan semua orang boleh mempunyai akses kepada air minuman yang selamat; dan

   (b) tiada pihak dibenarkan untuk secara tidak munasabah mengaut keuntungan daripada perkhidmatan yang berkaitan dengan bekalan air.

[13] From the above statements, I agree with learned counsel for the applicants' contention that the applicants are persons "adversely affected" and not "busy bodies, cranks and other mischief makers" by the decision of the 1st respondent. Each and every applicant is a paying water consumer within the area covered by the concession agreement. With SYABAS now in monopoly over the distribution of treated water in the concession area, the applicants do not have an alternative access to treated water. If the water tariff is increased and they have to pay more money for water, they have no real choice to refuse to pay because there is no alternative supplier of water available. In addition thereto, water being essential for life is part of a constitutional right which can be implied under the Federal Constitution. On the facts and circumstances of this case, it is obvious that the applicants had a real and genuine interest in the subject matter. They are adversely affected by the increase in water tariff and in this regard there is a direct nexus with the decision of the 1st respondent's. I, therefore hold the applicants have established they had a *locus standi* to bring this action.

The Concession Agreement

[14] The Concession Agreement is a tripartite agreement. It was revealed in the written submission of the 1st and 3rd respondents that cl. 45 of the said agreement restrains disclosure to any third party without prior mutual agreement of the parties unless disclosure

A is required by law or the rules of any stock exchange. It is also evident from the 2nd respondent's written submission that they have no objection to disclose the concession agreement to the applicants. *Vide* their letter of 14 April 2010 addressed to the applicants' solicitors, SYABAS has categorically stated that they also have no B objection to the disclosure of the concession agreement. Be that as it may, with the consent of all the parties concerned to which I am very thankful, I chose to solve the issue of whether disclosure should be made or not by having sight of both the documents. Both the documents were handed to me by the learned Federal C Counsel for the 1st and 3rd respondents on 18 June 2010. By adopting this approach, it would assist me in determining these two factors:

1. Whether both the documents contain information detrimental to D the national security or public interest; and

2. Whether the Audit Report contains information relevant to the Concession Agreement, and in particular relevant to the increase in water tariff.

E **[15]** Having read through both the documents, in particular the Concession Agreement, I had no doubt that it contains no information detrimental to the national security or public interest. But I could foresee its disclosure may lead to public discussion and criticism against the government. At this juncture, I think it is only F appropriate for me to mention that even though the concession agreement was not disclosed yet, information on Non Revenue Water (NRW) and its percentage of reduction, formula for the increase in tariff, period of review and payment of compensation to SYABAS have already been in circulation by the media and other G third parties. In that sense, it can no longer be treated as a confidential document because these are the major issues. In the first place the concession agreement is not a private agreement. It was executed with public interest in mind. The public rely on the good conscience and governance of the government to protect their H interest. Therefore it is in the public interest also that the agreement should be disclosed. What could possibly be wrong if what the public want to know is was the deal a win-win situation or a one sided agreement benefiting one party only? Until and unless the concession agreement is disclosed to the public, it will I cause more anxiety to the public in wanting to know matters that

affect their basic needs. In this era where transparency, accountability and priority is given to the needs of the rakyat, it is only fair that the concession agreement be made public. I was of the view that court should lean in favour of the aggrieved party in matters involving public interest.

[16] Even if I am wrong in coming to the conclusion, I still think there is no detriment to national security following the principle of law in *The Commonwealth of Australia v. John Fairfax & Sons Ltd* [1980] 147 CLR 39 at p. 52, where it was held:

> … it can scarcely be a relevant detriment to the government that publication of material concerning its actions will merely expose it to public discussion and criticism. It is unacceptable in our democratic society that there should be a restraint on the publication of information relating to government when the only vice of that information is that it enables the public to discuss, review and criticize government action.
>
> Accordingly, the court will determine the government's claim to confidentiality by reference to the public interest. Unless disclosure is likely to injure the public interest, it will not be protected. The court will not prevent the publication of information which merely throws light on the part workings of government, even if it be not public property, so long as it does not prejudice the community in other respects. Then disclosure will itself serve the public interest in keeping the community informed and in promoting discussion of public affairs.

[17] Applying the above principles to the facts of this case, I would say the disclosure of the concession agreement will serve the public interest in keeping the public informed of the working of the government as well as promote discussion of public affairs.

The Audit Report

[18] By its title alone, one can envisage the contents of an audit report, irrespective of its subject matter. Normally such a report contains information on the findings made and suggestions to overcome any shortcomings. Having read the Audit Report myself, I had this to say. The report contains information relevant to the Concession Agreement, in particular to the increase in water tariff. But, I was of the view that the report did not contain information detrimental to the national security or public interest. As with the Concession Agreement, here also I could foresee there will be public

discussion and criticism against the government. Logically, if the concession agreement is to be disclosed, then the audit report had to be made public also because the audit report made reference and comments on certain provisions in the concession agreement. Although the 1st and 3rd respondents argued the audit report is classified as "Rahsia", its classification does not in any way bar this court from looking at the document as a whole to see whether its disclosure would be detrimental to national security or public interest. This must be the only test to be applied by this court. It is nonsensical to say any document put before the Cabinet is automatically to be treated as "RAHSIA" under s. 2A of the Official Secrets Act 1972. This is in line with the decision made by Richard Malanjum J (as he then was, now CJ Sabah & Sarawak) in *Takong Tabari v. Government of Sarawak & 3 Ors* [1995] 1 CLJ 403, wherein His Lordship states:

> In my view the Official Secrets Act deals mainly with the prevention of unauthorized disclosure of official secrets and thus created offences for any such infringement. I do not think it is intended to be used to avoid any liability or to defeat any claim regardless of the culpability of the party relying on it. It is obvious that the primary goal of the Act is to protect classified documents or information which by such disclosure would be detrimental to the national security or public interest.

[19] I further found support in the case of *Shri Dinesh Trivedi, MP & Ors v. Union of India & Ors* [1997] 4 SCC 306 at p. 313 which held:

> In modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the Government which having been elected by them, seeks to formulate sound policies of governance aimed at their welfare.

[20] Before me, learned counsel for the applicants submit the Audit Report was produced before the Cabinet on or about 11 October 2006. But there was nothing in the respondents' affidavit to show that prior to the above date, the Audited Report is classified or gazetted as an Official Secret. The 1st and 3rd respondent also failed to show how disclosure of the Audit Report would be detrimental to the national security or public interest. Thus, it is submitted that the document does not fall within the Schedule to s. 2A of the Official Secrets Act 1972 (OSA). I agree

entirely with the applicants' contention simply because the evidence thus far adduced in the respondents' affidavit merely says the Audit Report was "RAHSIA" because it was presented before the Cabinet. That reasoning alone is not convincing enough to justify protection under the Schedule to s. 2A of the OSA. To accede to the 1st and 3rd respondents' argument is akin to saying any document labelled as "RAHSIA" can claim protection and that is the end of the matter. I believe there must be an explanation or purpose as to why any particular document is classified as "RAHSIA". It also cannot be the spirit of OSA to extend protection in cases where the government believed there will be public discussion and criticism against the government's action.

[21] In the alternative, it was further submitted, even if OSA can be invoked, it was invoked in bad faith to avoid liability and with a purpose of defeating the claim of the applicants. It was never heard before that disclosure of the Audit Report would be detrimental to the national security or public interest. I am not in a position to comment whether there was bad faith or not. But one thing I am certain here and that is I am not convinced the Audit Report is classified as "RAHSIA" because its disclosure is detrimental to national security or public interest. In fact I was of the opinion that the truth is the contrary. The disclosure of the Audit Report is not detrimental to the national security or public interest.

[22] To sum up, the 1st respondent's refusal to disclose the Concession Agreement and the Audit Report was made without taking into consideration the legitimate expectation of a member of the public who is affected in the decision making process to be treated fairly. The respondents' decision to allow privatization of water services and arbitrary increases to the tariff and at the same time invoking the Official Secrets Act is disproportionate not only to the aim of the Official Secrets Act but also runs counter to the principles of good governance, accountability, transparency and "the interest of the rakyat should come first". Failure to comply with these principles will inevitably result in this court giving an order compelling the respondents to do so.

For those reasons, I allowed this application with costs.